

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|--|-------------------------------|---|------------------------------------|---------------------------------|
| Investigator: Matthew Wasserman | Team: Team # 1 | CCRB Case #: 201004354 | <input type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Sunday, 03/21/2010 11:45 PM | Location of Incident: Grand Concourse and East 156th Street | Precinct: 44 | 18 Mo. SOL 9/21/2011 | EO SOL 9/21/2011 | |
| Date/Time CV Reported Thu, 04/01/2010 5:04 PM | CV Reported At: CCRB | How CV Reported: In-person | Date/Time Received at CCRB Thu, 04/01/2010 5:04 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |
| | | |

| Witness(es) | Home Address |
|-------------|--------------|
| | |
| | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM Elliot Zinstein | 03152 | 947634 | BX IRT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-----------------------|-----------|--------|----------|
| 1. POM Steven Ramunno | 11784 | 930874 | 044 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.POM Elliot Zinstein | Abuse: PO Elliot Zinstein frisked § 87(2)(b) | |
| B.POM Elliot Zinstein | Abuse: PO Elliot Zinstein searched § 87(2)(b) car. | |

Case Summary

§ 87(2)(b) filed a complaint with the CCRB in-person on April 1, 2010. At about 11:45 p.m. on March 21, 2010, § 87(2)(b) car was stopped at East 156th Street and the Grand Concourse in the Bronx by PO Elliot Zinstein of the Bronx Impact Response Team and PO Steven Ramunno of the 44th Precinct. PO Zinstein mistakenly arrested § 87(2)(b) for driving with a suspended license. The following allegations resulted:

Allegation A—Abuse of Authority: PO Elliot Zinstein frisked § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Allegation B—Abuse of Authority: PO Elliot Zinstein searched § 87(2)(b) car. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) was offered and rejected mediation.

Results of Investigation

Civilian Statements:

Complainant: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male with brown eyes and black hair who is 5'10" tall and weighs 173 pounds. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) was interviewed at the CCRB as a walk-in complainant on April 1, 2010 (encl. 5A-5C). At about 11:45 p.m. on March 21, 2010, § 87(2)(b) was driving his 1992 Honda Accord on the Grand Concourse in the Bronx. § 87(2)(b) cousin, § 87(2)(b) was in the front passenger seat and two females § 87(2)(b) had just met, § 87(2)(b) and § 87(2)(b) were sitting in the back seat. At East 156th Street, a marked police van containing two uniformed officers pulled up to the right of § 87(2)(b) car while he was waiting at a red light. The driver was a 6'1" tall bald white male in his 30s, identified in the course of the investigation as PO Steven Ramunno of the 44th Precinct and the passenger was a skinny 6'0" tall blond white male, identified through investigation as PO Elliot Zinstein of the Bronx Impact Response Team.

While they were stopped at the red light, PO Ramunno asked § 87(2)(b) "How are you doing?" § 87(2)(b) replied that he was good. PO Ramunno then asked § 87(2)(b) for his license, but not his registration. § 87(2)(b) passed his Georgia state driver's license to § 87(2)(b) who passed it to PO Ramunno. At this point, neither officer had exited their van. § 87(2)(b) also has a New York State driver's license, but did not pass this to PO Ramunno as he could not find it. PO Ramunno told § 87(2)(b) to pull to the side and § 87(2)(b) moved his car to a bus stop in front of the police van.

After the officers had § 87(2)(b) license for a minute, PO Ramunno exited his vehicle and approached § 87(2)(b) PO Ramunno told § 87(2)(b) that his New York State license was suspended. PO Ramunno asked § 87(2)(b) to step out of the car and he complied. PO Ramunno then asked § 87(2)(b) to go to the back of his car. At the back of the car, PO

Ramunno frisked § 87(2)(b). After PO Ramunno frisked § 87(2)(b) he handcuffed § 87(2)(b) and placed him in the police van.

The officers had the three passengers step out of § 87(2)(b) vehicle. From the van, § 87(2)(b) observed PO Zinstein search the glove compartment of his car and the back seat for two to three minutes. The interior lights in § 87(2)(b) car were on and the area was illuminated by streetlights. As part of this search, PO Zinstein recovered § 87(2)(b) New York State driver's license, which was in his wallet. § 87(2)(b) thought his wallet was on the dashboard or in the glove compartment. Either PO Ramunno or PO Zinstein frisked § 87(2)(b) outside of the front passenger door. § 87(2)(b) did not see either female passenger get frisked or searched.

§ 87(2)(b) was transported to the 44th Precinct in the marked van by PO Ramunno while PO Zinstein drove § 87(2)(b) car to the station house. At the station house, § 87(2)(b) believed he was transferred to the custody of a new officer, whom he described as a 5'11" skinny white male in uniform wearing a yarmulke named "Elliot Zinstein." After about four hours at the station house, § 87(2)(b) was taken to Bronx Central Booking. § 87(2)(b) was subsequently released from Central Booking without seeing a judge.

When § 87(2)(b) was released, PO Zinstein told him there was an error in the DMV records: when they looked up his record by DOB it showed that § 87(2)(b) had a suspended license, but when they searched by ID number it showed that § 87(2)(b) did not have a suspended license. § 87(2)(b) stated that he handed in his New York State junior license when he applied for his Georgia driver's license, but he retained his New York State class D driver's license and was not aware of any reason why this license would be suspended. § 87(2)(b) did not mention receiving any summonses, nor did he provide any documentation of a summons related to this incident.

The notice of claim filed by § 87(2)(b) on § 87(2)(b) is consistent with his CCRB statement (encl. 5F-5H).

Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male with black hair and brown eyes who is 6'3" tall and weighs 155 pounds. § 87(2)(b)

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on April 6, 2010 (encl. 6A). § 87(2)(b) was interviewed at the CCRB on April 20, 2010 (encl. 6B-6D). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) stated that the driver of the police van was a chubby, approximately 5'11" white male, identified as PO Ramunno, while the passenger was an approximately 5'5" tall slim white male, identified as PO Zinstein. PO Ramunno handcuffed § 87(2)(b) outside the driver's door while PO Zinstein frisked § 87(2)(b). In his phone statement, § 87(2)(b) stated that PO Zinstein searched him, but at the time of his CCRB statement he did not remember if PO Zinstein went in his pockets. § 87(2)(b) had keys, a wallet, a phone, chapstick and loose bills in his pockets.

PO Zinstein told § 87(2)(b) that he was going to allow him to drive § 87(2)(b) car if he had proper identification, but § 87(2)(b) told PO Zinstein that he only had a learner's permit. Following the frisk of § 87(2)(b) PO Zinstein searched § 87(2)(b) car from both sides. PO Zinstein opened the glove compartment, the center console, looked under the seats and underneath the mats, but did not open the trunk. § 87(2)(b) did not see any physical interaction between the officers and § 87(2)(b) or § 87(2)(b).

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female.

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on April 5, 2010 (encl. 7). § 87(2)(b) corroborated the search of § 87(2)(b) car, but did not mention the frisk of § 87(2)(b). § 87(2)(b) missed a scheduled interview at the CCRB on April 12, 2010, and did not respond to a missed-appointment letter and two subsequent phone calls.

Witness: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black female.

CCRB Testimony

§ 87(2)(b) provided a phone statement to the CCRB on April 9, 2010 (encl. 8). This statement was generally consistent with § 87(2)(b)'s CCRB statement, although she did not mention the frisk of § 87(2)(b). § 87(2)(b) missed a scheduled interview at the CCRB on April 16, 2010, and did not respond to a missed-appointment letter and two subsequent phone calls.

NYPD Statements:

Subject Officer: PO ELLIOT ZINSTEIN

- *PO Elliot Zinstein is a § 87(2)(b)-old white male with black hair and brown eyes who is 5'7" tall and weighs 150 pounds. PO Zinstein wears a yarmulke.*
- *PO Zinstein worked from 5:30 p.m. on March 21, 2010, to 2:05 a.m. on March 22, 2010. PO Zinstein was in uniform and working with PO Ramunno in a marked van.*

Memo Book

PO Zinstein had the following memo book entries relating to this incident (encl. 9A-9E). At 11:40 p.m.: Car stop in front of 760 Grand Concourse." At 11:46 p.m.: Arrest at location. At 11:55 p.m.: Arrived at the 44th Precinct station house. At 12:30 a.m.: Queens § 87(2)(b) grandmother of § 87(2)(b) picked up his car. PO Zinstein also has the following summary of this incident: While driving north-bound on Grand Concourse in front of 760 Grand Concourse observed GA license plate number § 87(2)(b) with obstructed view. Upon further investigation driver's license [of § 87(2)(b)] was found to be suspended in New York State.

Arrest Report

At about 11:46 p.m. on March 21, 2010, PO Zinstein arrested § 87(2)(b) for § 87(2)(b) (encl. 9G-9H). The arrest narrative reads: § 87(2)(a) 160.50
§ 87(2)(b)

Summons

PO Zinstein issued § 87(2)(b) a summons for a violation of § 87(2)(b) (encl. 9F). The narrative reads: “§ 87(2)(b)

Stop and Frisk Reports

PO Zinstein filled out stop and frisk reports for § 87(2)(b) and § 87(2)(b) (encl. 9I-9J). The stop and frisk report for § 87(2)(b) indicates that he was stopped at 11:40 p.m. at the Grand Concourse and East 161st Street (encl. 9K-9L). According to the computerized stop and frisk report, he was suspected of criminal mischief while according to the handwritten UF-250, he was suspected of criminal trespass. § 87(2)(b) was stopped for five minutes, following one minute of observation. § 87(2)(b) was stopped for the following reasons: “in park after dark” and “suspicious bulge/object—wallet.” § 87(2)(b) was frisked for the following reasons: “inappropriate attire—possibly concealing weapon” and “other—wallet.” According to the computerized stop and frisk report, § 87(2)(b) was not searched. However, according to the handwritten UF-250, § 87(2)(b) was searched due to a “hard object.” The following additional circumstances are checked off: “area has high incidence of reported offense”; “time of day/week corresponding to criminal activity” and “proximity to scene of reported offense.” § 87(2)(b) s demeanor is listed as “calm” and the following physical force was used: “hands on suspect.”

The stop and frisk reports for § 87(2)(b) and § 87(2)(b) are filled out identically to one another and indicate that they were stopped in front of 760 Grand Concourse at 11:46 p.m. on suspicion of criminal possession of a weapon (encl. 9M-9P). They were stopped for ten minutes, following two minutes of observation. The circumstances leading to their stop were “actions indicative of engaging in violent crimes.” § 87(2)(b) and § 87(2)(b) were frisked, but not searched, for the following reasons: “violent crime suspected” and “inappropriate attire—possibly concealing weapon.” The following additional circumstances are checked off: “area has high incidence of reported offense”; “time of day/week corresponding to criminal activity”; “suspect is associating with persons known for their criminal activity”; “proximity to scene of reported offense” and “ongoing investigation.” The demeanor of both § 87(2)(b) and § 87(2)(b) is listed as “calm” and the following physical force was used on both individuals: “hands on suspect.”

Unrelated to this incident, PO Zinstein also filled out a stop and frisk report for § 87(2)(b) on March 21, 2010 (encl. 9Q-9R), which matched a memo book entry that he made. § 87(2)(b) was stopped on suspicion of criminal trespass at 10:45 p.m. at the Grand Concourse and East 163rd Street. The circumstances leading to the stop were: “in park after closing” and “suspicious bulge/object—phone.” § 87(2)(b) was frisked, but not searched, for the following reasons: “inappropriate attire—possibly concealing weapon” and “other—phone.” The following additional circumstances are listed: “area has high incidence of reported offense,” “time of day/week corresponding to criminal activity” and “proximity to scene of reported offense.” § 87(2)(b) demeanor is listed as “calm” and the following force was used: “hands on suspect.”

CCRB Testimony

PO Zinstein was interviewed at the CCRB on June 4, 2010 (encl. 9Q-9R). PO Zinstein and PO Ramunno were driving north-bound on the Grand Concourse in the Bronx when they pulled over a car in front of 760 Grand Concourse for an obstructed rear-view mirror. There were two males in the car, identified as § 87(2)(b) and § 87(2)(b) and PO Zinstein thought there was an air freshener on the mirror. PO Zinstein was the passenger and PO Ramunno was the driver.

The officers had § 87(2)(b) and § 87(2)(b) exit the vehicle. § 87(2)(b) was searched incidentally to lawful arrest while § 87(2)(b) was frisked for weapons. PO Zinstein thought that PO Ramunno was the officer who frisked § 87(2)(b). PO Zinstein thought that PO Ramunno had seen something that caused him to fear for his safety, but was not sure why PO Ramunno frisked the passenger. PO Zinstein's attention was mostly focused on § 87(2)(b). PO Zinstein did not recall any specific reason that he suspected that any of the passengers had a weapon and did not recall having any reason specific to this car stop to fear for his safety, although he stated that during car stops, especially at night, "you're always very careful of your safety."

PO Zinstein drove the car back to the 44th Precinct station house as § 87(2)(b) either did not have a valid driver's license or § 87(2)(b) did not give § 87(2)(b) permission to drive his vehicle. PO Zinstein did not search the car at the scene. After driving the car back to the station house, PO Zinstein conducted an inventory search as he thought the car was going to be vouchered. However, PO Zinstein later turned this car over to § 87(2)(b) grandmother.

PO Zinstein was shown the stop and frisk reports he filled out for this incident. Seeing these stop and frisk reports did not refresh his memory, as he had limited recall of this incident and his recollection "mostly comes from whatever's in my notes." PO Zinstein thought that the stop and frisk report for § 87(2)(b) was unrelated to the car stop as it gave a different address from 760 Grand Concourse, which is at East 156th Street, and stated that § 87(2)(b) was "in the park after dark," while this incident did not involve a park.

Witness Officer: PO STEVEN RAMUNNO

- *PO Steven Ramunno is a § 87(2)(b)-old white male with a bald head and brown eyes. He is 5'9" tall and weighs 280 pounds.*
- *PO Ramunno worked from 5:30 p.m. on March 21, 2010, to 2:05 a.m. on March 22, 2010. PO Ramunno was in uniform, assigned as the training officer and working with PO Elliot Zinstein in a marked van at the time of this incident.*

Memo Book

PO Ramunno had the following memo book entry relating to this incident (encl. 10A-10C). At 11:43 p.m.: Car stop; one under arrest in front of 760 Grand Concourse for VTL 5-11 [driving with a suspended license].

CCRB Testimony

PO Ramunno was interviewed at the CCRB on June 16, 2010 (encl. 10D-10E). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

PO Ramunno stated there were three or four occupants of § 87(2)(b) car, including two females. § 87(2)(b) was searched incidentally to lawful arrest while the officers frisked the other occupants of the car for weapons. PO Ramunno did not recall which individuals he personally frisked. PO Ramunno had no particular reason to suspect that any of the occupants of the car were armed. The officers frisked the passengers of the car to ensure their safety as they were arresting the driver. Viewing the stop and frisk report filled out for § 87(2)(b) did not refresh PO Ramunno's memory and PO Ramunno did not recall if any individuals frisked had any bulges on their person. PO Ramunno also stated that PO Zinstein conducted a limited search of § 87(2)(b) car at the scene for weapons.

DMV Records

A search of DMV records revealed that § 87(2)(b) surrendered his New York State driver's license on § 87(2)(b), when he obtained a Georgia driver's license (encl. 14A-14B).

Arrest for Incident and Disposition

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Status of Civil Proceedings

§ 87(2)(b) filed a Notice of Claim with the City of New York on § 87(2)(b), claiming false arrest and unlawful imprisonment and seeking unspecified monetary damages as redress (encl. 5F-5H). As of August 3, 2010, no 50-H hearings had been held or scheduled with regards to this notice of claim.

Civilian Criminal Histories

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 3A-3B).

Subject Officer CCRB History

- PO Elliot Zinstein has been a member of the service for two years and there are no substantiated CCRB allegations against him (encl. 2).

Conclusion

Identification of Subject Officer

PO Zinstein was identified as the officer who frisked § 87(2)(b) as he matched the pedigree information provided by § 87(2)(b) and he was the only officer wearing a yarmulke. PO Zinstein was identified as the officer who searched § 87(2)(b) car by his own statement.

Allegations Not Pled

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: PO Elliot Zinstein frisked § 87(2)(b)

It is undisputed that § 87(2)(b) was frisked. § 87(2)(g)

Both PO Zinstein and PO Ramunno stated at the CCRB that they had no particular reason to suspect that § 87(2)(b) or any other passenger in § 87(2)(b) vehicle was armed. In fact, the only explanation that either officer gave for the frisk of § 87(2)(b) was PO Ramunno's statement that they frisk the passengers in a vehicle as a matter of procedure when arresting the driver. On the other hand, the stop and frisk report for § 87(2)(b) states that § 87(2)(b) was frisked due to his "inappropriate attire" and a suspicious bulge, which turned out to be a wallet. However, this stop and frisk report clearly contains erroneous information, such as that § 87(2)(b) was stopped in a park several blocks away from where he was actually stopped. As at least some of the information on the stop and frisk report filled out by PO Zinstein for § 87(2)(b) appears to pertain to an earlier stop of an individual or individuals in a park, it is unclear what relationship, if any, the factors cited for frisking § 87(2)(b) on the stop and frisk report have to why § 87(2)(b) was in fact frisked.

According to Kamins, the general rule is that in order to lawfully frisk an individual "an officer must have reasonable suspicion to believe a suspect has committed a crime *and* a reasonable suspicion that the suspect is armed and dangerous...a frisk is permitted in the absence of a specific, articulated danger to the police when an officer stops a suspect because he reasonably believes the individual committed a *violent* crime [encl. 1A-1B]." *New York Search & Seizure*, 2-80 to 2-81 (2008 ed.). Kamins further states that if during a car stop, officers make observations that give rise to a reasonable belief that a driver or passenger is armed, they can lawfully frisk that individual (encl. 1C). *Ibid.*, 5-77. In particular, "if an officer observes a bulge in the passenger's clothing, which justified a reasonable suspicion that the passenger is armed, the officer will be permitted to order to passenger out in order to conduct a frisk [encl. 1D]." *Ibid.*, 5-88.

§ 87(2)(g)

Allegation B—Abuse of Authority: PO Elliot Zinstein searched § 87(2)(b) car.

It is undisputed that PO Zinstein searched § 87(2)(b) car after placing § 87(2)(b) under arrest, although it is disputed whether this search happened at the scene or at the 44th Precinct station house. It is also undisputed that PO Zinstein took this vehicle into custody and drove it to the station house. Patrol Guide Procedure 218-13 instructs officers to conduct a thorough inventory search of every automobile that comes into the custody of the NYPD (encl. 1E-1F). ■

§ 87(2)(g)

Team: 1

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Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date